IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 22304 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE K.M.MEHTA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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MOHAN NATHUJI KHATRI THRO' SURESHCHANDRA N. KHATRI - Petitioner(s)

Versus

THE STATE OF GUJARAT & 3 - Respondent(s)

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Appearance :

MR HR PRAJAPATI for Petitioner(s) : 1,
RULE SERVED BY DS for Respondent(s) : 1,
SERVED BY RPAD - (R) for Respondent(s) : 2,
GOVERNMENT PLEADER for Respondent(s) : 3,
MR JITENDRA MALKAN for Respondent(s) : 4,
M IA SHAIKH for Respondent(s) : 4,

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CORAM : HONOURABLE MR.JUSTICE K.M.MEHTA

Date : 27/01/2006

ORAL JUDGMENT

1.The petitioner detenu had filed habeas corpus petition under Article 226 of the Constitution of India for quashing and setting aside the detention order dated

16.8.2005 passed by the District Magistrate Valsad in exercise of powers under sub section (2) of section 3 of the Prevention of Black Marketing And Maintenance of Supplies of Essential Commodities Act., 1980 (herein after referred to as the Act) detaining the petitioner as being illegal, invaid, arbitrary void, ab initio, suffers from non-application of mind and also in violation of provisions of Articles 14,19, 21 and 22 of the Consitution of India.

2. The petition was filed origianlly on 15.11.05. When the matter was placed for hearing on 18.11.05, this Court had issued Rule and the same was made returnable on 8.12.05.

3. On behalf of the respondent Mr. Pujari appears. With the consent of the parties the matter is taken up for hearing.

4. Mr. H. R Prajapati learned advocate on behalf of the petitioner appears and Mr. M.A Shaikh Central Government standing counsel appears on behalf of Union of India. The detaining authority has supplied certain grounds of detention which include all the relevant documents which have been considered in arriving

subjective satisfaction by the detaining authority before making order of detention to the detenu in order to enable the detenu to make an effective representation. The copies of the document supplied by the detaining authority are partly illegible unless the xerox copies of original documents are supplied, the petitioner is not in a positiion to make proper and effective representation and therefore the detaining authority was requested to supply the photo copy of original documents. As the detaining authority has failed to accede to the request made by the petitioner, the continued detention of the petitioner becomes violative of Article 22 (5) of the Constitution of India. Learned advocate for the petitioner thus stated that in this case on page 779, 783, 781, 783, 785, 787, 789, 791, 793, 795, 841, 842, 844, 845, 846, to 850 served the documents which are absolutely illegible and therefore right of detenu to make an effective representation under Article 22 (5) of the Constitution of India is violated.

It may be noted that the original documents have also been shown to Mr. Pujari Learned AGP and after going through the same he has considered that the documents were also illegible. The learned counsel has

relied upon the judgement in support of the aforesaid contention. The learned counsel has submitted that the judgement of the Apex Court in the case of Smt. Dharmista Bhagat Vs. State of Karnataka 1989 Supp (2) Supreme Court cases 155 particularly 157 " This court in Mehrunissa V. State of Maharashtra has oberved that the detenu was entitled to be supplied with copies of all material documents instead of having to rely upon his memory in regard to the contents of the documents. The failure of the detaining authority to supply copies of such documetns vitiated the detention, as has been held by this Court in the two cases cited by counsel. The detenu is therefore, entitled to be released. He is accordingly directed to be released forthwith. " Therefore, it is imperative that the detaining authority has to serve the grounds of detention which include also all the relevant documents which had been considered in forming the subjective satisfaction by the detaining authority before making the order of detention and referred to in the list of documents accompanying the grounds of detention in order to enable the detenu to make an effective representation to the Advisory Board as well as to the detaining authority. Therefore, the non supply of legible copy of

this vital document i.e panchnama dated February 12, 1988 inspite of the request made by the detenu to supply the same renders the order of detention illegal and bad.

The learned counsel has relied upon the Division Bench Judgement of this Court which also supports this case. 92 (2) GLR page 753. In view of the aforesaid judgement of the Apex Court and Division Bench Judgement the contention of the petitioner is well founded and the same is covered by the said decision and the same is required to be accepted. In view of the same the petition is allowed. The order of detention dated 16/8/2005 is quashed and set aside. The detenue Mohan Nathuji Khatri is ordered to be set at liberty forthwith if he is not required in connection with any other case. Rule is made absolute accordingly. Direct service is permitted.

(K.M.MEHTA, J)

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